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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 651

C. LEON DE-ARYAN,

Petitioner,

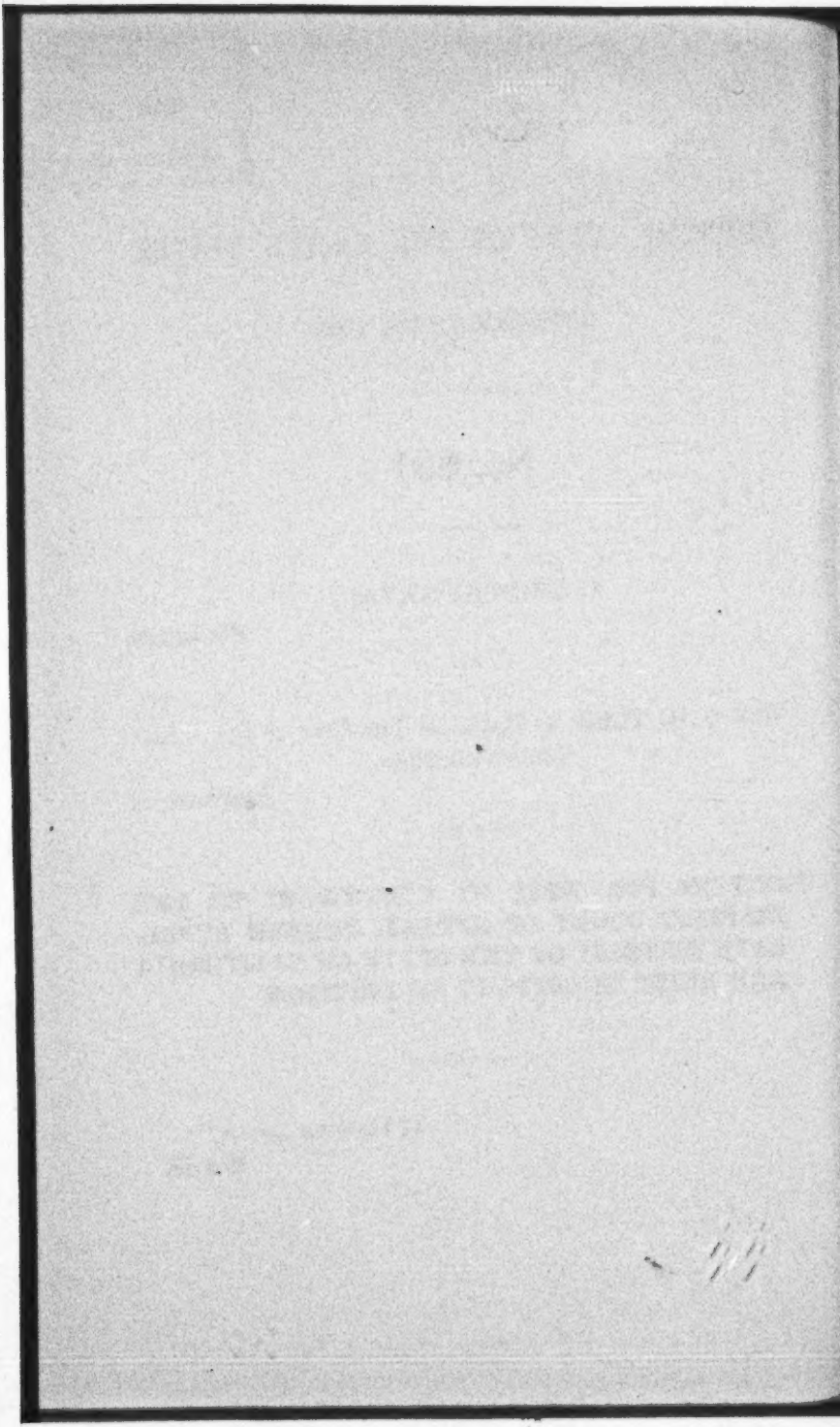
vs.

JOHN D. BUTLER, AS MAYOR OF THE CITY OF SAN DIEGO, CALIFORNIA, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT OF PETITION.

C. LEON DE ARYAN,
Pro Se.



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C. LEON DE ARYAN,

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vs.

JOHN D. BUTLER, AS MAYOR OF THE CITY OF SAN DIEGO, CALIFORNIA, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO APPELLATE COURT, FOURTH DISTRICT, STATE OF CALIFORNIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Appellate Court, Fourth District, of California entered in the above named action on August 13, 1953, and upheld by the Supreme Court of the State of California through its order denying petition for rehearing on November 24, 1953.

Opinions Below

The Appellate Court of California, Fourth District, rendered a written opinion (Transcript of Record, 11, at page

28), and the Superior Court of San Diego, County, California, also rendered a written opinion April 3, 1952 (Transcript of Record, 5, at page 8).

Jurisdiction

The Superior Court of San Diego entered its judgment on April 3, 1952. The Appellate Court, Fourth District, of California rendered its written opinion August 13, 1953. The Supreme Court of California denied petition for rehearing on November 24, 1953. Upon petition Chief Justice Warren extended time for filing this petition to and incl. of March 23, 1954.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Also, 11 Am. Jur., Constitutional Law, p. 713, par. 88, Obligatory of Duty of Courts.—Since the Constitution is intended for the observance of the judiciary as well as the other departments of government and the judges are sworn to support its provisions (*U. S.* v. *Fisher*, 2 Cranch (U. S.) 396, 2 L. Ed. 304), the courts are not at liberty to overlook or disregard its commands. (*Coffman* v. *Bank of Kentucky*, 40 Miss. 29, 90 Am. Dec. 311.)

Also, page 825, par. 145, *supra:* Judicial Notice as to Facts involved in Constitutionality of Statutes.—The general rule is that in passing on the constitutionality of a statute, courts will take judicial notice of all facts relevant to the question as to its validity, bringing to their assistance such scientific, economic, physical, and other pertinent facts as are matters of common knowledge (page 826, *supra*) . . . Moreover the Supreme Court has stated quite broadly that the invalidity of a statute may be shown by things which will be judicially noticed or by facts established by evidence. *Weaver* v. *Palmer Bros.*, 270 U. S. 402, — L. Ed. 654, 46 S. Ct. 320; *Abbey Land and Improvement Co.* v. *San*

Mateo County, 167 Cal. 434, 139 P. 1068, 52 L. R. A. (N. S.) 408, Ann. Cas. 1915C 804; *Mallette* v. *Spokane*, 77 Wash. 205, 137 P. 496, 51 L. R. A. (N. S.) 686, Ann. Cases 1915D 225.

Also, page 1087, par. 306, *supra:* Duty and Rights of Courts—In accordance with the general rule that where the validity of legislation is properly raised, it is the duty of the judiciary to determine its constitutionality, when the police statutes are challenged as an invasion of rights and liberties guaranteed by the fundamental law, it becomes the duty of the courts to determine whether the exercise of power is really necessary for the public good. *Replogle* v. *Little Rock*, 166 Ark. 617, 267 S. W. 353, A. L. R. 1333.

In compliance with Rule 12(1), third paragraph, the following is the procedural history of the matter in the State Courts of California:

On October 30, 1951 (Trans. of Record, p. 1) the City Council of San Diego, California, ordered its City Manager thru Resolution No. 104213 to add fluorides to its city water, after a public hearing was had and the people were divided in their attitude; some favored the measure and at least an equal number disapproved.

On the 27th of December, 1951, your petitioner as a resident taxpayer and elector in the City of San Diego, filed a complaint in the Superior Court of San Diego charging that Resolution No. 104213 violated (T. R., p. 3) the Tenth Amendment of the U. S. Constitution, which reserves to the people the immunity of person (T. R., p. 4), and stated in VII of the complaint "That said Resolution authorizes a wanton waste of public funds for an alleged benefit which in the best instance would be infinitesimal in relation to the large amounts of money to be expended." In addition to it, and based on the charges, petitioner asked the Superior Court for a restraining order against various employees of the City, forbidding them to carry out the intent

of the Resolution No. 104213, in violation of the Fourth (trespass) and Tenth Amendments to the U. S. Constitution.

A temporary restraining order was issued, then amended on the 28th day of December, 1951, by the Superior Court (T. R., p. 7).

The City's Demurrer was overruled and following a hearing of plaintiff's evidence the Superior Court approved a motion for nonsuit in favor of the City, dissolving the temporary restraining order. A Memorandum Opinion on Motion for Nonsuit was filed by the Superior Judge Dean Sherry on April 3, 1952 (T. R., p. 8).

Your petitioner took an appeal to the Fourth District Court of Appeal of California. A hearing was had and on August 13, 1952 the Appellate Court rendered a written Opinion in favor of the City (T. R., p. 28).

Petitioner applied for rehearing which was denied, then appealed to the Supreme Court of California for a hearing; that, too, was denied and on November 24, 1953 the California Supreme Court denied your petitioner's petition for a rehearing (T. R., p. 40).

Errors Assigned

Petitioner petitioned the Fourth District Court of Appeals of California, appealing from the judgment of the Superior Court and citing Amendments 14, and 1 to the U. S. Constitution (T. R., p. 25). The following errors were assigned:

1. The trial court erred when it disregarded the Rule of Evidence on a Motion for Nonsuit (T. R., p. 22, poison cumulates: concentrates).

2. The trial court erred in rendering an elaborate, written Opinion as though the Court had heard both plaintiff and defendants. In said decision the Court weighed conflicting evidence in contravention of plaintiff's rights on Motion for Nonsuit.

3. The trial court erred when it declared that the City Council has the *sole and absolute authority* of decision in a controversial experiment.

4. California Health & Safety Code does not authorize State Board of Public Health to license practice of State medicine via water purveying.

5. *Indiscriminate* addition of Sodium Fluoride as medical treatment (vermin-killing ingredient; rat poison; T. R., p. 26, Sec. 402(a) Food, Drug and Cosmetic Act) to water distributed to consumers is prohibited by statute and policy in California, and constitutes violation of the person contra U. S. Constitution.

6. Addition of Sodium Floride to water supply is an unwarranted and unlawful excess of police power by the City of San Diego contra the protections afforded by the U. S. Constitution.

7. The addition of fluoride compounds to the public water supply violates religious and individual freedom guaranteed by the U. S. Constitution. (Amendments 1, 10, 14 and U. S. Statutes.)

8. Transcript of Record, p. 27, Excerpts from Appellant's Reply Brief.

Errors of Appellate Court

In his petition to the California Supreme Court for a hearing on appeal petitioner assigned the following errors to the Opinion rendered by the Appellate Court:

1. Appellate Court erroneously ruled that Appellant's pleadings were insufficient to give it jurisdiction because appellant had failed to specifically allege the City Council acted arbitrarily or that the determination by it was unreasonable.

2. Appellate Court erroneously denied jurisdiction in an equity case to protect the person of citizens against unconstitutional trespass by exercise of an excess of police power by the City.

Errors Assigned in Petition for Rehearing, Supreme Court of California

Petitioner petitioned the California Supreme Court for rehearing and assigned the following errors in the Opinions of the courts below:

1. The decisions of the courts below deprive petitioner of due process of law. (Amendments 5 and 14, U. S. Constitution.)

2. In granting the motion for nonsuit the Superior Court violated the rule governing nonsuit.

3. *Fuentes* v. *Tucker,* 31 Cal. 2d 1, is misapplied by the Opinion of the Appellate Court and has no bearing whatever on the nature of this case (T. R., p. 34).

4. Suggestion of Appellate Court of deciding *constitutional* issue by popular referendum is erroneous (T. R., p. 37).

5. The Resolution of the City and the two Opinions of the courts below impose State medicine under color of legality in violation of the person in contravention of U. S. Constitution.

6. Storage of large supplies at distribution centers of water system produces a dangerous hazard by providing future saboteurs with enough poison to kill all consumers if dumped into the water system at once.

In the case of *West Virginia* v. *Barnette,* 319 U. S. 624, decided June 14, 1943, the United States Supreme Court held that the State of West Virginia in requiring a flag salute, violated the *14th Amendment.* In support of its decision, the Court spoke at page 638, as follows:

> "There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution * * * *One's right to life, liberty, and property,* to free speech, a free press, freedom of worship and assembly, and other fundamental

rights *may not be submitted to vote;* they depend on the outcome of no elections."

Fuentes v. *Tucker,* 31 Cal. 2d 1, is misapplied by the California Appellate Court and has no bearing whatever on the nature of this case (T. R., pp. 34 and 39).

The Appellate Court's holding that plaintiff should have alleged arbitrariness and unreasonableness in his pleadings, and that failing to do so it eliminates this issue from the proceedings, is erroneous and inapplicable here. This is a reversion to legal practices of 300 years ago.

In *Fuentes* v. *Tucker* the issue is the amount of damages to be paid by a private defendant as a result of a car collision. It is a suit between two private parties and strictly limited to the details in the pleadings.

In the present case we have an action to restrict the City to its powers under the law and any excess for any cause whatever makes its action illegal regardless of the pleadings so that it is not necessary to specifically allege arbitrariness and unreasonableness before being entitled to prove that the City violated the law and transgressed its restrictions. An illegal act by the City remains illegal and void of authority thru its own nature, which plaintiff may point to at any period in the proceedings to protect his rights. This is a case of restraining a governmental body and not a private suit for damages.

Suggestion of Deciding the Issue by Referendum Is Erroneous

(T. R., p. 37, 2 bottom paras.)

Appellate Court suggests that the people may repeal the City's resolution by referendum. Of course, they may. But constitutional matters may not be referred to majority vote. This suggestion shows that the appellate court missed entirely the issue at stake. This is a remedy against illegal

exercise of power and the people may not be postponed to such a remedy against illegal acts of governmental bodies. Trespass upon the person is an illegal act whether against one or the many.

Questions Presented

1. Does a legislative body have the authority to impose prophylactic medication upon consumers of a public utility water system, without their consent and in spite of individual protests on constitutional grounds of trespass upon their persons?

2. Does the State Public Health Board of California have the authority to issue a license to a City Council to impose alleged prophylactic medication upon unwilling consumers of a public water distributing system authorizing the City to enter by "the back door" to do an act forbidden by the U. S. Constitution and Federal Statute?

Statutes Involved

The pertinent statutes and constitutional provisions are printed in the Appendix, *infra*, p. 27, 28.

Statement of Case

Sodium Fluoride is a waste product obtained in the manufacture of aluminum from bauxite. Until 1945 it cluttered up the yards at the aluminum factories since the amounts sold to industry for production of vermin exterminants, (rats, etc.) was relatively insignificant. It is a very virulent poison and no antidote is known. It has also been used in hardening cement while pouring concrete; that gave the chemists of the Aluminum Companies an idea: It might harden dentine and prevent cavities. Also, being a virulent poison, it might destroy the bacteria that attack the teeth after a meal. This now opened up for the Aluminum Companies a new market for its waste, *if it could be sold to the public.*

Just at that time one Oscar R. Ewing, of the law firm of Hubbard, Hill & Ewing, attorneys for the Aluminum Co. of America, was appointed head of the Federal Security Administration and of the U. S. Public Health Service. He propagandized the various public health boards, dental and medical organizations in the 48 states and the U. S. territories, praising the new "miracle" drug for the preservation of teeth. With the change in federal administration Ewing lost his post last year and returned to Hubbard, Hill & Ewing as attorney for the Aluminum Co. of America. Among other things, Mr. Ewing favored a system of socialized medicine and the welfare state.

Resolution No. 104213

A previously unsalable, hence worthless, product was being sold to cities and waterworks at fabulous prices between $170 to $200 a ton. Sodium Silico Fluoride is cheaper than Sodium Fluoride. It is a waste product derived from the manufacture of fertilizers out of phosphate rock.

The deleterious substance in the phosphate rock, as found in the available natural mineral, is the sodium silico fluoride which is eliminated in the process of producing a fertilizer. Now the City of San Diego is using the *Deleterious* waste by dissolving it in water and putting it on our lawns and gardens, to the detriment thereof. This is one of the reasons why the lobbyists asked for passage of a bill by the legislature in Sacramento granting *immunity* against damage suits to utilities using fluorides in their water.

Sodium silico fluorides and sodium fluorides form hydrofluoric acid on contact with digestive juices which is a strong poison used in etching glass. While they are *cumulative* and cannot be controlled in solution (T. R., p. 22) concentrating with removal or evaporation of water, they are *adhesive* as silicates, being deposited in crevices of the internal organs of the human or animal bodies and when

the quantity accumulated is sufficient, corrodes the organs and even causes death: hence are good vermin exterminators (11 Am. Jur., p. 825, para. 145).

But instead of granting immunity to the lobbyists' requests the legislature, mindful of the policy of the state to respect individual liberty of choice in medication, passed Sec. 26470.5 instead, giving private bottling companies permission to fluoridate for the use of customers who want such type of prophylactic medicine.

The following notice is pasted on the sacks delivered to the water works: "Warning! May Be Fatal if Inhaled or Swallowed. Avoid breathing dust. . . ." (Exhibit "A") As a result, the City of San Diego is encasing the handlers of the sacks of fluoride in an airproof plastic suit similar to a sea diver's suit, with helmet and air hose (Exhibit "B").

By passing Resolution No. 104213, the City of San Diego joined the ranks of patrons of Mr. Ewing's former and present employers. Your petitioner took court action, obtained a temporary restraining order against the City and prevented installation of fluoridation for six months. After a hearing in Superior Court of plaintiff's side alone, Judge Dean Sherry granted the motion for nonsuit, which *he had suggested* to the City Attorney, and fluoridation was installed by the City Manager.

Reasons for Granting the Writ

"Liberty, the most contagious Force in the World" and ". . . no people of any race will long remain slaves", said Chief Justice Warren on Jan. 14th, this year, at the bi-centennial Alexander Hamilton dinner of Columbia University. This is the issue here and the best reason why the Writ of Certiorari should be granted. The case presents an alleged abuse of police power by which the majority of

the populace in the City of San Diego are plied with a potent poison, sodium fluoride, in their drinking and cooking water in violation of the 1st, 5th, 9th, 10th and 14th Amendments to the United States Constitution as set forth in detail in this petition. (T. R., p. 26; *Federal Law on Fluorine and U. S.* v. *Commonwealth Brewing Corp. and Lee Kaufman.* Said the District Court to the jury: "take into consideration the fact that fluorine would kill rats, etc.")

> "We, the people of the United States, in order to form a more perfect union . . . and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Preamble to the U. S. Constitution.

Amendment IX.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

A principle of good government:—"What the individual can better do for himself, he must be free to do so."

May a legislative body under our Constitution impose medication under another name: *Prophylaxis,* upon protesting consumers of the public water system? Is smallpox vaccination "mere prophylaxis" or a medical "preventative" treatment?

A number of injunctions have been resorted to in various states against fluoridation of public water systems which might ultimately reach this Court, ours being the first one (Exhibit "C").

Trespass on Individual Person

2 California Attorney General Opinions, N. S., Opinion No. 5116, at p. 246, September 21, 1943:

Subject: Public Health, Voluntary Tuberculosis Associations should obtain the Consent of Parents of Minors prior

to taking X-ray pictures of their children to avoid liability for personal trespass.

Prepared For: Director of Public Health, San Francisco.

Prepared By: Carl W. Wynkoop, Deputy Attorney General.

In your letter . . . you ask whether it is necessary for voluntary tuberculosis associations to obtain parental consent to take X-ray pictures of minors in war work in the Los Angeles area. While there is no statute requiring that the consent of the parents of a minor be obtained prior to taking X-ray pictures of a minor, personal liability may rest upon those persons who do so without obtaining such consent and upon those who direct their actions.

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In *Figlietti* v. *Frick*, 203 Cal. 246, it is held:

> "If the operation was performed while that relation (physician and patient) existed, it is equally a breach of duty, if performed without the consent on the part of the patient, or, in the case of a minor, if thought capable of giving consent, or if, with consent, it was done unskillfully."

The courts have uniformly held that without the consent of a patient or one standing in loco parentis, a surgeon is without authority to operate on a child. The taking of X-rays or *administering* to a person without his consent or to a minor without the consent of the parents is a trespass upon the person upon whom the services are performed.

Liability

The matter of liability was referred to by Justice Griffin in the Opinion rendered by the Appellate Court (Trans. of Rec. p. 31, second paragraph from bottom): "It (State Legislature) also provided for exemption to municipalities, etc. for any damage that might result therefrom (fluoridation)."

The medical lobby at Sacramento had presented a draft to the Legislature to blanket the whole State of California, imposing fluoridation upon request of the medics, dentists and Health Boards. In it was included a clause of immunity from damages. This was rejected and instead an act was passed authorizing addition of fluorine by Bottling Companies for consumers who wanted it, thus securing Individual Liberty of Choice (Health and Safety Code, Sec. 1, of Sec. 26470.5).

The Southern California Water Works Organization composed of sanitary water engineers passed a resolution by membership vote which recommended that fluoridation be deferred at present until results show whether it has deleterious effect upon the human organism in general. Both sanitary engineers of the City of San Diego, Roy E. Dodson, Jr. and Carl Wilson (T. R., p. 23) expressed the same view in their recommendations but the City Council overruled them. It is noteworthy that while the Water Works Organization polled its membership, the Dental, Medical and P. T. A. organizations did not poll their membership but issued executive recommendations by the respective officers in favor of fluoridation now. We have been unable to find any report on experiments with fluoridation to determine how it cumulatively affects the various organs of the human body; neither have inquiries in dental and medical circles brought forth any such information. They are "guessing" that one part per million in water is harmless.

The State Board has no legal authority to approve the

inclusion of prophylactic medicine for treating human ailments in the amended license supplied to the City upon request. It appears that the Board and the City Council have entered into a conspiracy to circumvent the legal restrictions against violation of individual constitutional rights of choice of medication by lending legal color through the instrument of "license approval" by the Board, in excess of the authority of both public bodies.

Strict Construction in Favor of Individual Rights

6 McQuillin, Municipal Corporations, at page 126, paragraph 20.51 states: (This was stated in the Opening Brief by petitioner to the California Fourth District Appellate Court):

> "*Strict Construction in Favor of Individual Rights.* Ordinances should be construed to declare and enforce the legislative intent without doing violence to the fundamental and constitutional rights of the individual. Indeed, the view is broadly taken that doubts as to whether an ordinance is valid, as in conflict with individual's rights, should be resolved against the city, at least where an ordinance involves exercise of a municipal power that is unusual in character or out of the usual range . . ."-
>
> *City of Miami Beach, et al.*, v. *The Texas Co.*, 141 Fla. 616, 194 So. 368;
>
> *Pounds* v. *Darling*, 75 Fla. 125, 77 So. 666;
>
> *City of Miami* v. *Kayfetz*, 158 Fla. 758, 30 So. (2d) 521.

5 McQuillin, page 100, paragraph 15.21:

> "*Conformity to Public Policy and Common Law.* Ordinances must in general conform and not be inconsistent with the public policy of the State . . . The rule requires at least substantial conformity, and under it an ordinance cannot . . . permit that which public policy forbids. Nor, under a general grant of power,

can a municipal corporation adopt ordinances 'which infringe the spirit or are repugnant to the policy of the state as declared in its legislation.' "

City of Harlan v. *Scott et al.*, 290 Ky. 585, 162 S. W. (2d) 8;

Town of Boaz v. *Jenkins*, 32 Ala. App. 299, 25 So. (2d) 394;

Town of Livingston v. *Scruggs*, 18 Ala. App. 527, 93 So. 224.

California State Statutes

Health and Safety Code

"Sec. 2559.6 Persons depending exclusively on prayer for healing: Exemption from examination or inspection: Isolation and quarantine: Submission to medical treatments: Confinement in hospital.—No examination or inspection shall be required of any person who depends exclusively on prayer for healing in accordance with the teachings of any well-recognized religious sect, denomination or organization and claim exemption on such grounds, except that provisions regarding isolation and quarantine shall apply where there is probable cause to suspect that such person is infected with the disease in a communicable stage. Such person shall not be required to submit to any medical treatment, or to go or be confined in a hospital or other medical institution; provided, he can be safely quarantined in his own home or other suitable place of his choice:—(California State Policy: No compulsory medication or "prophylaxis").

The Health and Safety Code of California contains enough evidence that the Policy of the State is to protect the Liberty of Choice of individuals who choose a method of cure and prevention of disease other than the orthodox, allopathic schools from which most professional doctors of Health Boards are recruited.

Sec. 2559.6 exemplifies protection under the First Amend-

ment to the U. S. Constitution and it removes adherents of prayer-healing entirely from the Authority of Health Boards to prescribe and administer medical treatment even in cases of acute epidemics.

Sec. 20703 names Fluorides soluble in water a "poison" which has to be labelled as such.

> "Sec. 20703. "Poison". "poison" means and includes the composition of the following schedules.
>
> Schedule "A"
>
> . . . (c) Fluorides soluble in water and preparations.
>
> Sec. 20751. Poisons enumerated in Schedules "A", . . . in Sec. 20703, not to be sold, etc. unless poison or caution label affixed to package: Form of label. It is unlawful for any person to vend, sell, Give Away or Furnish, either directly or indirectly, any poisons enumerated in Schedule "A", . . . in Sec. 20703, unless there is affixed a poison label to the package, box, bottle, or paper in which the "A" . . . poison is contained . . .

Sec. 20752 goes farther and makes the Awareness of the buyer that it is a "poison" a condition of sale or distribution. This awareness is lacking in the distribution through the municipal water system in San Diego, hence endangers Life and Limb, since according to testimony of chemical experts the relative amount of "poison" is uncontrollable in cooking (including baking; Trans. of Rec. Page 22) it is "cumulative" (Trans. of Rec. p. 26, last paragraph). And what happens to a produce garden which is watered daily with the addition of the "poison" that does not evaporate but settles in the soil and on and in the plants? What is the effect upon eating it? Does it stay one part in a million?

> *Sec. 20752. Prerequisites to sale or delivery of poisons in Schedule "A".*—It is unlawful to sell or deliver any poison named in Schedule "A" or any other

poison . . . unless *On Inquiry it is found* that the person desiring it *Is Aware of its poisonous character*, and it satisfactorily appears that it is to be used for a legitimate purpose.

The medical and dental professions consider merely the "dental" aspect and effect upon children, they have *No Reports from specific long term Observation and Comparison With Check Groups* upon the test of the organism of the human body. Hence, both Sanitary Engineers of the City of San Diego have warned the City Council not to fluoridate at present and their organizations, upon membership polls, have done likewise. (Trans. of Rec. Page 23, bottom paragraphs. Page 22, bottom paragraph and Page 23.)

The intent and policy of the Legislature is the protection of minors against accidental poisoning, as evidenced by Sec. 20753, of the Health and Safety Code. All these sections quoted Supra support petitioner's contention that the courts below violated the Rule of Nonsuit since we cited sufficient authorities and law on our side to make out a valid case.

Sodium fluoride being an uncontrollable poison which cumulates as the water evaporates from the original solution and becomes a dangerous concentrate, the Legislature provided safeguards against Schedule "A" poisons and named the fluorides by name. It provided that those to whom the poison is delivered must be aware of its character; in this case that it concentrates upon evaporation and the ratio does not remain one part to a million. And to make doubly sure, the Legislature has forbidden the delivery of such poison to minors, under 18 years of age.

To comply with the rule of labelling and Awareness of the poisonous character, every faucet in the City would have to be labelled with a warning ticket: "poison", and an explanation given of the cumulative character of the fluoride

upon evaporation. Also that it is deposited and adheres to crevices at water pipe connections and the internal organs of the human body.

> *"Sec. 20753. Sale or delivery of poison enumerated in Schedules "A" . . . in Sec. 20703 to person less than 18 years old.*—No poison enumerated in Schedules "A" . . . in Sec. 20703 shall be sold or delivered to any person who is less than eighteen years of age."

Sec. 20753 definitely and categorically Prohibits delivery of "Poison 'A' Schedule" Fluorides to *any person who is less than eighteen years of age.* Yet children under 12 are being plied with a cumulative poison Unaware of what its ultimate effects upon their bodies might be apart from their teeth.

> *"Sec. 21003. Interference with freedom of sect depending on prayer for healing.* Nothing in this part shall be construed to interfere with freedom of any adherent of teachings of any well-recognized religious sect. . . . to depend exclusively upon prayer for healing . . . any such person . . . shall be exempt from all provisions of this part regarding venereal diseases, except . . . compulsory reporting of communicable diseases and the quarantine of such diseases, and . . . regarding callings at which a person with venereal may not engage . . ."

Sec. 1 of Sec. 26470.5 comes with the legal solution to all questions of fluoridation. It allows for the purchase of fluoridated bottled water by individual consumers which includes the parents of minor children. Thus no individual rights are infringed and the experiment may proceed for well or woe.

> *"Sec. 1 of Sec. 26470.5 Adding fluorine, etc., to bottled water for domestic use not prohibited: Approval: Labeling requirements.*—Nothing in this article shall prohibit the adding of fluorine or fluorine compounds to

water intended for sale to the public as bottled water for domestic use in such manner and to such an extent as may be approved by the state department; provided, that the labeling requirements hereinafter set forth in this chapter are met."

Necessity

11 Am. Jur. p. 1075, Sec. 303:

"*Sec. 303. Appropriateness of Means.*—It is a general rule that in order for a police measure to be reasonable the means adopted must be reasonably necessary and appropriate for the accomplishment of the legitimate objects falling within the scope of the power. (*Miller v. Board of Public Works,* 195 Cal. 477.) In order to sustain legislative interference by virtue of the police power, either by a statute or a municipal ordinance, it is necessary that the act should have some reasonable relation to such objects (*Louis K. Liggett Co.* v. *Baldrige,* 278 U. S. 105), or for more specific examples, to the public welfare (*Ex parte Quarg,* 149 Cal. 79) or public health. Moreover the law must tend toward the accomplishment or promotion of such purposes in a degree that is perceptible and clear, either in preventing some offense or manifest evil, or in furthering some such object. The means employed should not go Beyond the Necessities of the case. (Emphasis ours.)

"The mere assertion by the legislature that a statute relates to the public health, safety, or welfare does not in itself bring that statute within the police power of the State, for there must always be an obvious and real connection between the actual provisions of a police regulation and its avowed purpose and the regulation adopted must be reasonably adapted to accomplish the end sought to be attained. A statute or ordinance which has no real, substantial, or rational relation to the public safety, health, morals, or general welfare is a palpable invasion of rights secured by the fundamental law and cannot be sustained as a legitimate exercise of police power . . ."

What Rational relation is there in plying three-fourths of the people with a poison, invading their homes, premises and gardens to "benefit" children, when bottled, fluoridated water is available? City went Beyond the Necessities of the case.

Quoting from Petitioner's Opening Brief to the Appellate Court (T. R., p. 25).

Constitutional Violation

> "*The Fourteenth Amendment* secures to each individual the right to life and liberty. The right of the individual is the right to liberty. Liberty is a broad general term. (*Block v. Schwartz*, 27 Utah 387; *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190). It is the inherent right of the individual to care for his own body and health. *Tomlinson v. Armour & Co.*, 75 N. J. L. 748, 70 Atl. 314);
>
> > "Among the most fundamental of personal rights is the right of personal security, including the preservation of a man's health from such practices as may prejudice or annoy it." (*supra*, 757).
>
> If fluoridation can have no beneficial effect on adult teeth, the means used to combat dental caries in children is not reasonably adapted to the end sought. While an attack on dental caries in children might be valid, to require adults to take the same medicine would be restraint without due process—a greater deprivation of rights. If alternate methods are available for attaining a desired end, the fact that one entails a greater deprivation than the other is a factor for consideration on the validity of the state's choice. (*Weaver v. Palmer Bros. Co.*, 270 U. S. 402).
>
> *The First Amendment* provides that Congress shall make no law prohibiting the free exercise of religion. With the passage of the Fourteenth Amendment and recent Supreme Court decisions (*Cantwell* v. *Conn.*, 310 U. S. 296) exercise of police power by a state is presumed to be unconstitutional when the First Amend-

ment liberties are involved (*Thomas* v. *Collins*, 323 U. S. 516).

Before the interest of the state will outweigh the interest of the individual, there must be a showing that the exercise of the particular religious belief is of such a nature as to create a 'clear and present danger' that it will bring about substantive evils that the state has the right to prevent. (*11 Am. Jur., p. 1087*, para. 306: ". . . whether the exercise of power is really necessary for the public good.") Unless the defendants can show that dental caries is a communicative disease, creating an epidemic, and present 'a clear and present danger', the presumption of unconstitutionality prevails. Since the court did not continue the trial that the defendants may produce such evidence—no such proof of a 'clear and present danger' exists in the record and the court erred in writing a memorandum of opinion involving constitutionality and granting motion for nonsuit."

Man's Home His Castle

One of the distinguishing principles in government of the Anglo-Saxon nation found expression in the phrase: "*An Englishman's Home is his Castle* which even the king must respect." In the U. S. Constitution this principle of security against invasion of the home has found expression in the *Fourth Amendment:* "The right of the people to be secure in their persons, houses, papers and effects . . ."

Such Security is at stake in the present case in San Diego. Under color of legality the City Manager is authorized to invade the person and the premises of the home owner and through the use of the municipal water system, ply him bodily, over his protests, with a drug he does not need, does him no good and is potentially harmful, especially the aged who have no or few teeth—his garden is polluted with a *cumulative poison spray* assimilable in his garden truck, which he does not want to put on his land and in his produce.

The California Legislature at Sacramento provided in the *Health and Safety Code, Section 1, Section 26470.5* a means by which no violence would be done to the principle of individual liberty of choice, by authorizing fluoridation of privately sold water by bottling firms for those who wish to use it.

In Petitioner's Opening Brief to the Appellate Court your petitioner stated:

> "From the foregoing it appears that the San Diego City Council has violated the policy of the state when it granted power to the City Manager to pipe fluorides upon the premises of the consumer, first—in violation of religious objections; second—in trespass without his consent. The allegation that it is done for the health of minors' teeth, too, is contrary to the state policy where the consent of the parents or loco parentis was not obtained for such treatment; while the flagrant imposition of treatment upon adults is in violation of common law."

Ordinances Subject to Review by Court

From Petitioner's Opening Brief to Appellate Court, p. 7:

> ". . . while a court of equity may interfere with and enjoin the action of a municipal corporation when acting or proposing to act in excess of jurisdiction and without authority where the injury would be irreparable." *Gilde* v. *Superior Court,* 147 Cal. 21.

In re *Miller,* 162 Cal. 687:

> "The police powers of the legislature . . . are not absolute or unlimited and the personal right . . . cannot be taken away or impaired at its mere will, nor at all, unless the public welfare demands it . . . Necessity."
>
> "*Legislative determination subject to review* by courts.—The means adopted to produce the public benefit intended, or to prevent the public injury, must

be reasonably necessary to accomplish that purpose and not unduly oppressive upon the individuals. The determination of the legislature as to these matters is not conclusive, but is subject to the supervision of the court, and if the above qualities are wanting, a law arbitrarily interfering with the right . . . will be held void."

A further question for the court to determine is whether there are practical means of preventing tooth decay which do not involve a governmental invasion of an individual's person and liberty.

11 Am. Jur. 1075, Paragraph 303, sets forth the rule that there must be a *reasonable* relation to the object of public health in that the means employed should not go beyond the *necessities* of the case.

The case of *Bowes* v. *Aberdeen*, 58 Wash. 535, at p. 542, quotes *Freund on Police Power*, page 133, paragraph 143, as follows:

> "The questions which present themselves in the examination of a safety or health measure are: * * * Is the restraint or requirement in proportion to the danger? Is it possible to secure the object sought without impairing essential rights and principles? * * *."

Section 1, Section 26470.5 of California Health and Safety Code authorizes alternative procedure *upholding individual Liberty of Choice.*

Federal Law on Fluorine

(T. R., p. 26)

Fluorine is considered a *deleterious* substance added to foods and beverages pursuant to Section 707 of the Food, Drug and Cosmetic Act. In *U. S.* v. *Commonwealth Brewing Corporation and Lee Kaufman*, F. N. J., F. D. C. 7926, p. 177, the defendants are charged with violation of Section

301a of the *Food, Drug and Cosmetic Act*. On p. 178, paragraph four, Judge Ford of the district court says in his instructions to the jury:

> "I want to point out to you that it is entirely unimportant and irrelevant how much the quantity of fluorine was which was added to the beer. The issue is: Was fluorine in some form added as an ingredient? If, *as one of the Supreme Court cases say*, it is an added deleterious ingredient, the statute denounces that. It is an added deleterious ingredient the statute denounces, not an added quantity of deleterious ingredient . . . *Section 402(a)(1)* of the statute . . .: 'A food shall be deemed to be adulterated (a)(1) if it bears or contains *any* poisonous or deleterious substance which may render it injurious to health' . . ."

On page 179 *Supra* third paragraph from bottom:

> ". . . Take into consideration the fact that fluorine would kill rats, take into consideration the testimony of the Professor, Dr. McNally, for the defendant, who said, I believe, that if he drank . . . about 15 bottles of this beer he would be apprehensive at that point because he had given about that amount of fluorine to rats and killed rats with it." (T. R. p. 26)

Resolution Unconstitutional under Due Process Clause

The due process clause of the *Fourteenth Amendment* to the United States Constitution reads as follows:

> " . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Conclusions

Your petitioner presents to this Court, and files herewith, as an exhibit thereto, a duly certified transcript of the

record of the case as far as needed in this proceeding, as the same appears in the District Court of Appeal, Fourth Appellate District of the State of California.

Also as a part of this petition your petitioner is filing Exhibit "A" showing the text of the Warning and "Poison" label affixed to paper sacks containing Sodium Silico Fluoride delivered to the water works of the City of San Diego; as well as Exhibit "B" which shows the plastic suit and helmet in which fluoride handling employes are encased for protective purposes, with airhose attached. Then this virulent poison which cannot be controlled is dumped into the water system.

Exhibit "C"* is the Opinion of Louisiana First District Court of Caddo Parish, Judge James U. Galloway, rendered in November 1953 in the case of *Mark E. Chapman, et al.* v. *City of Shreveport*, while issuing a preliminary writ of injunction, prohibiting the defendant from proceeding further to fluoridate the City water supply. The case was appealed to the Louisiana Supreme Court and is set for argument May 7, 1954. It is expected to eventually reach your honorable court. We call attention to the following passages of Judge Galloway's Opinion which we adopt as our own argument in conclusion:

> (*page 8, Exhibit "C"*) But medication, in lay understanding, includes prophylaxis or preventive measures, when applied to the individual. Even dietary regimes prescribed by the doctor of medicine is, in this sense, medication. Considering the end results that are sought, we cannot escape the conclusion that it is a form of medication or at least a scientific treatment or a sort of hydro-therapy, by way of ingesting these mineralized waters, of and for the children of the community under twelve years of age . . .
>
> (page 12, *supra*:) . . . No person or segment of

*[Filed in mimeographed form.]

the population having that condition (dental caries) can, on that account, have any adverse effect on the health, dental or otherwise, of the general public or any member or segment thereof. We repeat, in our opinion this is not a matter of public health. It is strictly within the realm of individual and personal dental health and hygiene within which each person should be free to choose his course for himself and those for whom he is responsible in the family relation. To this field the just powers of the government do not extend.

WHEREFORE, your petitioner prays that a Writ of Certiorari may be issued out of and under the seal of this Court to the District Court of Appeal, Fourth Appellate District, of the State of California, to the end that the judgment thereof may be reviewed by this Honorable Court.

Respectfully submitted,

C. LEON DE ARYAN,
Petitioner in Propria Persona.

APPENDIX

United States Constitution

Preamble—We the People of the United States in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Amendment 1—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 4—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Amendment 5—No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 9—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment 10—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 14, Sec. 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

Title 28, Sec. 1257. State courts; appeal; certiorari. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

Title 28, Sec. 1257 (3)—By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution . . .

Food, Drug and Cosmetic Act—Sec. 301. The following acts and the causing thereof are hereby prohibited:

(a) the introduction or delivery for introduction into interstate commerce of any food, drug, device or cosmetic that is adulterated or misbranded.

Sec. 402(a)(1) . . . A food shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health . . .

Sec. 705 (a) The Secretary shall cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

(Here follows 2 photographs, Exhibits "A" and "B")

EXHIBIT "A"

WARNING!

MAY BE FATAL IF INHALED OR SWALLOWED.

Avoid breathing dust.

Keep away from feed and food products.

Wash thoroughly after handling.

Sweep up spillage.

STORE IN A DRY PLACE.

Buyer assumes all risk of use or handling whether or not in accordance with any suggestions, recommendations or directions of seller.

POISON

CALL A PHYSICIAN IMMEDIATELY!

ANTIDOTE: Give a tablespoonful of salt in a glass of warm water and repeat until vomit fluid is clear. Precede by lime water or 1% calcium chloride solution if available. Give strong tea or coffee or aromatic spirits of ammonia, teaspoonful in water.

9GSA-52

GENERAL CHEMICAL DIVISION

ALLIED CHEMICAL & DYE CORPORATION

NEW YORK, N. Y., U. S. A.

Reproduction of "poison" label affixed to Sodium Silico Fluoride sacks delivered to the City of San Diego, Water Department.

EXHIBIT "B"

This unretouched photograph shows an employee of the City of San Diego with the protective suit and air hose necessary when adding poisonous fluorides to our city water supply. These precautions are unnecessary during the addition of any other substance, even chlorine.

Exhibit "C"

FIRST DISTRICT COURT, CADDO PARISH, LOUISIANA

No. 116,282

MARK E. CHAPMAN, ET AL.

v.

CITY OF SHREVEPORT

OPINION

This case is now before the Court for decision following trial of petitioners' application for a preliminary writ of injunction to prevent the fluoridation of the publicly owned and operated City water supply, which is at present fluorine-free, pursuant to the decision of the City Council so to do. As the first step to effectuate its decision, the Council adopted a resolution authorizing the Commissioner of Public Utilities to proceed with calling for bids for the purchase of the necessary equipment. This suit followed.

Petitioners are residents, citizens, ad valorem taxpayers of the city, and purchasers of water from the City for their use and the use of their families. Petitioners contend that the proposed fluoridation of the public water supply and the expenditure of public funds for such purpose are illegal, null and void; whereas the City asserts the legality and validity of the proposed action.

On the trial of the application the evidence, for the most part, was, by agreement of counsel, adduced in the form of affidavits and statements of witnesses. In addition, the Court admitted, over objection of defendant's counsel, transcript of "Hearings before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics, House of Representatives, 82nd Congress, Held in January and February, 1952." Included in this evidence are the scientific opinions and reports of doctors of medicine, dentists, chemists, biochemists, health officials, research engineers, scientists, etc., from this locality and from many other parts of the United States. The result is a voluminous record dealing with involved scientific matters

upon which the experts themselves are not in unanimity of view. To all this we have given prolonged consideration and study to the end that we might obtain an understanding of the essential facts necessary to the proper application of the legal principles involved in this controversy.

What is fluoridation? It is the impregnation of the City water supply with fluorine ions, accompanied by the mechanical addition to the water of a suitable and soluble fluorine compound, called a fluoride. Sodium fluoride is the one whose use is contemplated by the City. This is necessary because the element fluorine, when isolated and not in combination, is a gas, highly toxic and corrosive, and reacts violently with water, but when the fluorine exists as ions (as it does in its salts) it is water soluble. These salts, or fluorides (ions of fluorine combined with ions of metals of some kind) occur in nature in varying amounts (almost always in low concentrations). In many areas of the United States, including areas in Colorado, Texas, Arkansas, Ohio, Illinois, and others, the natural water supplies contain varying concentrations of fluoride. The evidence establishes that the fluorine ion is contained in many of the foods which are common to the American diet, notably the vegetables and proteins. The evidence shows that the artificial fluoridation can be effected by apparatus designed and perfected so as to accomplish with mechanical accuracy the concentration desired.

What is the purpose of artificial fluoridation? We may begin to answer this question by observing what fluoridation is not intended to accomplish. Fluoridation has nothing to do with and bears no relation to the purity, sanitation, or potability of the water. Chlorination is the universally accepted method of sterilization. The reason chlorine is the universally accepted agency for ridding water supplies of impurities, bacteria and other organisms deleterious to health is that it is both effective and safe. Its effectiveness has been demostrated from long experience and it is accepted by unanimity of scientific opinion to be efficiently destructive of water-borne bacteria and deleterious organisms. It is safe because it accomplishes its purpose in concentrations that are not toxic and because of its fugitive characteristic and tendency to escape and

separate from the water after its work is done. Thus it is pointed out in the evidence that the farther away from the point of mixing the water is the less and less the chlorine concentration becomes, so that usually by the time it reaches the consumer's water faucet its presence is not observed. This tendency to escape and separate is accelerated with temperature rise. To the contrary, fluorine is not and cannot be effectively used for the purpose of sterilizing the water, because the amount of fluorine necessary to be added to water for that purpose would result in a highly toxic concentration. Moreover, fluorine does not possess the fugitive characteristic of chlorine. It remains in the water, and a rise in temperature, accelerating evaporation, leaves the fluorine unaffected and increases the concentration. All the evidence on this point supports the statement from the affidavit of A. A. Hirsch, City Chemist and Water Purification Superintendent for the City of Shreveport, that "Fluorine in any form, either elemental or combined, to affiant's knowledge, has never yet been proposed or contemplated as a sterilizing agent for public water supplies."

The admitted aim of fluoridation is to reduce the number of cases of dental caries, or tooth decay, among the children of the community of the age of approximately 12 years and under, the age span during which dentitions, deciduous and permanent, take place.

At this point some historical information concerning fluoridation is enlightening. Some years ago in certain areas of the United States where the public water supply naturally contained the element fluorine, it was observed that the native population and those who had resided in the areas over long periods of time manifested a phenomenom of "mottling" of the enamel of their teeth. By a process of elimination fluorine was convicted as the offender and this condition received the name "fluorosis" in acknowledgement of its parentage. This mottling was not removable and occurred in various degrees characterized by the scientists as ranging between mild and extreme, producing defects ranging from "cosmetic" in the mild to "functional" in the extreme cases. This condition of fluorosis was observed to be worse in areas having excessive concentration of fluorine in the particular water supply. Resultant

studies indicated that these toxic effects of fluorine did not occur, except in minimal amounts, where the fluorine concentration did not exceed approximately 1 PPM, that is, one part fluorine per million parts of water.

Paradoxically, it was observed by the students of this problem that in these same areas, while the mottling, or fluorosis, was observed, there was less dental caries, or tooth decay, as compared to areas where the public water supplies were fluorine-free, particularly among children under the age of approximately twelve. This age group, approximately 10 or 12% of the population, was used in the studies because of their availability and accessibility in the schools. As a result, the theory that controlled fluoridation, that is, the concentration of approximately 1 PPM, was effective in reducing the incidence of dental caries, or tooth decay, among children during the periods of dentition, both deciduous and permanent teeth, while avoiding any toxic effects otherwise, has received widespread acceptance among many scientific observers.

The accumulated evidence does indicate that fluorine in public water supplies reduces the incidence of tooth decay. The real difference of opinion among the experts is whether sufficient evidence has been obtained to prove that the fluorine ion in public water supplies, which the entire population is required to ingest, particularly when artificially or mechanically added, may not have a cumulative toxic effect, particularly upon the aged, the ill, and those suffering from chronic physical ailments, etc. Test programs in laboratory and field have been under way and are still in progress on this question. The proponents of fluoridation assert that there is already sufficient evidence to demonstrate that controlled fluoridation is not harmful in any respect to the rest of the population. They point to population surveys which have been made in the areas where naturally fluoridated water has been ingested for many years. These surveys, they say, reveal no greater incidence of the other diseases common to humanity in those areas than in the areas where water is fluorine-free. The opponents say these surveys are as yet inconclusive and unacceptable. Let the scientists and the lapse of time resolve the question. We are not qualified to decide

that controversy. Fortunately, it is not necessary to a decision in this case. We only refer to it here because we think it is relevant to what we conceive to be the basic issue of fact as well as law in the instant suit.

The evidence establishes that fluoridation will not cure dental caries nor prevent it entirely, even in the young age group which it is designed particularly to serve. Dental caries, or tooth decay, exists in the naturally fluoridated areas as well as the areas which have artificially fluoridated water supplies, even among the children below twelve years of age. Fluoridation, therefore, is not a specific, such as smallpox vaccine is for smallpox. All that is claimed for fluoridation is that there will be less dental caries with fluoridated water than with water that is flourine-free.

What is dental caries, or tooth decay? It is classified by the scientists as a disease. It is widespread and prevalent, not only in most of the United States, but also in the area of Shreveport. Its cause is as yet unknown. The evidence indicates that the most generally accepted scientific theory on the subject is that tooth decay is the result of the enzymatic action of one or more bacterial organisms in or around the teeth. There is no known cure. The only available treatment is the removal of the affected area followed by filling with appropriate material. With these facts in mind, the next question naturally arises as to how the placing of fluorine in water is thought to combat tooth decay. In other words, what is the process of its action following ingestion? And this is important, we think, in a proper determination of the legal issue in this case. We have noted two theories advanced out of the mass of scientific evidence in this case. One is that, as a result of drinking fluoridated water, some of the fluorine ions are deposited or stored in the dental tissues or teeth and that they serve as inhibitors of the destructive actions of the bacteria which are thought to cause the decay of the teeth. The other theory is that the drinking of fluoridated water "changes the flora of the mouth," which we suppose means that the fluorine ion in the water that is drunk perhaps serves to destroy in the mouth some of the bacteria which, if left uninhibited, would eventually attack the teeth. Under either theory it is our

appreciation of the evidence that the purpose of fluoridation is to accomplish the application of the fluorine ion to the teeth and the dental area by external contact in the mouth or as a result of body metabolism and that the drinking water is merely the vehicle by which that is accomplished. In other words, it is either the direct or indirect application to the teeth and the dental areas of the fluorine ion, or perhaps both. Indeed, a number of the scientists whose opinions appear in the record expressed the opinion that the direct application (they call it topical application) of the fluorine ion to the teeth and dental tissues accomplishes the same result as is claimed for fluoridated drinking water, except that they do not claim quite as high a percentage of reduction in the incidence of tooth as is claimed by the advocates of fluoridation. There is evidence in the record that there are other elements besides fluorine which have demonstrated a capacity to combat tooth decay similar to that of fluorine, and without any toxic effect otherwise. Again, these are conflicting theories which we are not called upon here to resolve.

The point is that these scientific facts convince us that the process of fluoridating a public water supply is in actuality a method of treatment by fluoridating the dental areas and tissues of the individual who drinks the water. The plaintiffs in this case call this mass medication. Defendant's counsel deplore the use of this terminology and say that it is in no sense medication. But we think defendant's counsel give too narrow an interpretation to the words. They would restrict the meaning of medication to a therapeutic or curative process; and, since they correctly point out that fluoridation is not designed to and cannot cure the disease of dental caries, it cannot be medication. But medication, in lay understanding, includes prophylaxis or preventive measures, when applied to the individual. Even dietary regimes prescribed by the doctor of medicine is, in this sense, medication. Considering the end results that are sought, we cannot escape the conclusion that it is a form of medication or at least a scientific treatment or a sort of hydro-therapy, by way of ingesting these mineralized waters, of and for the children of the community, under

twelve years of age. And the entire balance of the population will be forced to take it, whether they want it or not, unless, as suggested in one argument, they obtain and use some other kind of water.

Before leaving the evidence pertaining to the nature and purpose of the fluoridation process we observe in the opinions of some of the experts statements that fluoridation is merely a process of adjusting the mineral content of the water so as to supply and relieve a mineral deficiency. The implication here is a theory that the absence of fluorine from drinking water is a nutritional deficiency. But in our opinion the evidence in the case falls far short of demonstrating that fluorine is an indispensable element in the growth and development of dental tissue.

Another aspect of the disease of dental caries which is established by the scientific evidence is that it is non-contagious and non-communicable. In short, it cannot be transmitted from one person to another. No person or segment of the population having decayed teeth can, on that count, have any effect upon the dental health of the general public or of any other member or segment thereof.

In the light of this review of the facts, let us turn to the legal aspects of this case. First, let it be noted that this is a case of first impression in Louisiana. No appellate court nor, as far as we know or have been informed, any other court in this state, has ever been called upon to consider this specific question. We, therefore, have no binding precedent to guide us here, but must rely upon our own judgment of the issue.

The basic and, to our mind, the decisive issue in this case, is plaintiffs' contention that the City Council has no delegated authority to fluoridate the City water supply. It is unnecessary to lengthen this opinion by citation of authorities for the proposition that a municipal government, being the creature and a subdivision of the State, derives its just and lawful powers from the State, and may exercise its delegated powers only for the purposes of the delegation. Such delegation may be either express or implied from the language and the nature of the delegation. We have already pointed out orally at an early stage of this litigation

that the City clearly has been delegated the express power to acquire, maintain and operate a City water supply and the plenary power to take all necessary action to protect the same from pollution and damage. We quote subsections (m) and (u) of Section 2.03, Chapter 2, of the City's Charter:

> "(m) To acquire amicably or by expropriation, construct, own, maintain and operate, within and without the city, water works, gas plants and electric plants, with the pipe and transmission lines incident thereto, for the purpose of supplying water, gas and electricity within and without the city, to charge and collect compensation therefor, and to provide penalties for the unauthorized use thereof, provided that no such plant shall be acquired except with the approval of a majority of the electors of the city voting thereon at an election called for the purpose, and provided that no water shall be sold to any other municipality except in accordance with the general laws of the state."
>
> "(u) To make all necessary regulations to protect the water supply of the city from pollution and other damage, and to exercise full and unlimited police power over the bed and waters of Cross Lake and for a distance of five thousand feet from the meander contour line which extends to the one hundred and seventy-two foot mean gulf level line as well as over the streams and tributaries of said lake for the same distance, and to pass any and all rules, regulations and ordinances deemed to be necessary for these purposes; and the city shall have the right and authority through its board of health, public safety department, public utilities department or otherwise, to inspect all of said property and the drainage area of said Cross Lake, and to enforce its ordinances and regulations by fine or imprisonment through the proper courts of the state."

In our mind it is not reasonable to hold that these specific delegations include by implication the authority to fluoridate the City water supply to combat dental caries in a segment of the population, for we observe no reasonable

relation between the two. Indeed, the very language expresses the purpose of the delegations to be "for the purpose of supplying water within and without the city" and "to protect the water supply of the city from pollution and other damage." We know of no other specific provisions, nor have we been referred to any, contained in any other statute or constitutional provision of this state, conferring any more specific authority than that contained in the above-quoted sections.

But defendant contends that, under its police power to protect and promote the public health, it acted within its authority in taking the proposed action. It cites the sweeping provisions of Section 2.01 of its Charter, to-wit:

> "Section 2.01. General Powers. The City of Shreveport shall have and may exercise all the powers, rights, privileges and immunities which are now or may hereafter be or could be conferred upon cities of its population class by the constitution and general laws of the state; all powers, rights, privileges and immunities heretofore conferred on said city by any special act and not inconsistent with this plan of government; and all other powers pertinent to the government of a city the exercise of which is not expressly prohibited by the constitution of the state and which, in the opinion of the council, are necessary or desirable to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this plan of government, and no enumeration of particular powers in this plan of government shall be taken to be exclusive but shall be held to be in addition to this general grant of power."

This impressive language is no more than the usual delegation of the police power and is to be so interpreted. To hold otherwise would be to introduce a new concept that the police power of government is unlimited. It is not to be considered that the redactors of this charter provision or the people who adopted it had any such purpose or intent. It would require libraries to contain the works of

text writers and judges dealing with police power. We shall refrain from adding another volume for, after all, the principle is not the subject of controversy and may be tersely stated.

Concerning the exercise of the police power in the domain of the public health, it is settled law that a municipality through its governing authority may take any action it may determine to be necessary and expedient, provided (1) the object of such action bears a reasonable relation to the public health, and provided (2) the means employed be not arbitrary, unreasonable, oppressive, or violative of the constitutional guaranties of the citizens. If this test be met the municipality's action is not subject to the control of the courts. Whether the means employed be good or bad, wise or unwise, is not the concern of the judiciary. But it is the duty of the courts to decide, when such governmental action is challenged, whether the purpose and object of such action bear a reasonable relation to the public health and whether the method resorted to to accomplish the object be arbitrary, unreasonable, or invasive of constitutional guaranties. In so deciding the courts look beyond the declared objective to ascertain whether it is in fact what the governing body has declared it to be and the court must be governed by the facts of each particular case. This is not a curtailment by the courts of the just powers of another branch of the government, but is merely a judicial determination of whether or not the governmental agency has strayed beyond the boundaries of the domain wherein it may, without judicial restraint, exercise its just powers.

We need only consider the first condition precedent to the valid exercise of police power indicated above. Under the facts of this case as we understand and have stated them, it is our opinion that fluoridating the City water supply bears no reasonable relation to the public health. It is worthy of note that the only specific reference to disease in the *City Charter (Section 2.04 (u) of Chapter 2)* is contained in the following language:

> "To make regulations not in conflict with the laws of the state, for the maintenance of cleanliness and sanitary conditions within the city, and to prevent the introduction and spread of contagious diseases; . . ."

Certainly it is not here suggested that the foregoing language delineates the boundaries of the domain of public health, for many subject matters not comprehended in the named categories have been held by the courts to be within that domain and, therefore, subject to regulation and control by the valid exercise of the police power. But all such are and have been "public" in their import, rather than being matters of personal health and hygiene.

We advert to the scientific evidence concerning the nature and cause of dental caries, or tooth decay. It is not contagious and cannot be transmitted from one person to another. No person or segment of the population having that condition can, on that account, have any adverse effect on the health, dental or otherwise, of the general public or any member or segment thereof. We repeat, in our opinion this is not a matter of the public health. It is strictly within the realm of individual and personal dental health and hygiene within which each person should be free to choose his course for himself and those for whom he is responsible in the family relation. To this field the just powers of the government do not extend.

The suggestion that the fluoridation of the City water supply can be legally justified as a measure bearing a reasonable relation to the general welfare is even more tenuous than the contention that it is within the domain of the public health. For the reasons we have heretofore stated, we think this contention is without merit.

The views we have expressed make it unnecessary to discuss or pass upon the other questions raised.

Accordingly, there will be judgment ordering a preliminary writ of injunction to issue herein, prohibiting the defendant from proceeding further to fluoridate the City water supply.

(S.) James U. Galloway,
Judge.